

# Exhibit A

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF KANSAS

3  
4 IN RE:

5 URETHANE ANTITRUST LITIGATION

CASE NO. 04-1616

6  
7 TRANSCRIPT OF MOTION IN LIMINE CONFERENCE

8 before

9 HONORABLE JOHN W. LUNGSTRUM

on

10 JANUARY 9, 2013

11 APPEARANCES

12 For the Class  
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1       blah. We're going to put on evidence of -- there's  
2       nothing wrong with any of that. It's just you're not  
3       going to tell them, by the way, members of the jury,  
4       they aren't here because they paid us some money.

5               MR. GUZMAN: We had intended to say things  
6       along the lines of, we allege this conspiracy that  
7       involves these other companies. They are not here.  
8       This case is against Dow and Dow only.

9               THE COURT: I have no problem with that.

10              MR. GUZMAN: Thank you, your Honor.

11              THE COURT: Yeah. All right. Anything  
12       further? All right. Let's turn to the deposition  
13       objections. Let me say as a first preliminary that  
14       there was a lot of skirmishing about the way in which  
15       the deposition excerpts were presented to me. I  
16       disregarded both the transmittal letter with the last  
17       section of depositions and the letter sent to me by  
18       Dow questioning the contents of that transmittal  
19       letter. I threw them both in the trash, actually,  
20       the recycling, to be more precise, but I didn't need  
21       the further help that whoever was trying to give me.  
22       I do want to say this though because I know that is a  
23       cumbersome process. This whole deposition objection  
24       thing is a pain in the neck for everybody, and I want  
25       to thank and congratulate both sides on an excellent

1 job in your own ways, either printed in or  
2 handwritten in, on making very clear to me what your  
3 objections were and why; and tabbing those pages for  
4 me saved my staff a considerable amount of effort and  
5 me a considerable amount of time. I read all this  
6 stuff, and it really helps me to have you have done  
7 it the way you did it. So thank you for your  
8 efforts.

9 Now, I have reviewed all of the deposition  
10 transcripts that were provided to me, and I am  
11 prepared to rule on the objections made. There are a  
12 couple of questions I want to ask about a couple of  
13 objections, but, generally speaking, I am prepared to  
14 simply tell you my rulings. I will make a few  
15 preliminary comments and then proceed to read to you  
16 the rulings. I am sorry I have not had the time to  
17 prepare my rulings in written form, so please listen  
18 carefully and ask me to repeat or clarify, and feel  
19 free to order a transcript, if you wish. This is  
20 going to be painful for all of us. This is one of  
21 the things I think the court reporter hates more than  
22 anything else, when we get down to this, trying to  
23 follow all the numbers and lines and everything else.

24 For your guidance, when I state that objections  
25 on certain pages or on ranges of pages are overruled,

1 I mean that all objections are overruled unless I  
2 specifically state otherwise. In other words, there  
3 may have been multiple objections raised. If I say  
4 overruled, I'm not going to deal with each one of  
5 them separately. When I sustain an objection as --  
6 this is the term I will use, beyond the scope, I'm  
7 using that phrase as shorthand for a combination of  
8 reasons for sustaining objections which plaintiffs  
9 style as outside the scope. Those reasons include  
10 not only literal determinations of outside the scope  
11 of direct examination by plaintiffs but also Rule 403  
12 considerations of confusion, delay, and  
13 cumulativeness and the court's inherent power to  
14 control the presentation of evidence. But beyond the  
15 scope is my shorthand for that.

16 While there is no exact rule of thumb that  
17 either requires or helps to determine proportionality  
18 between direct and cross examination, I do think that  
19 the court can, and should, be cognizant of the order  
20 of presentation of proof by which the party who bears  
21 the burden of persuasion also enjoys the advantage of  
22 primacy in presenting its evidence. With deposition  
23 testimony, unlike live testimony, the party who seeks  
24 to present evidence which might arguably fall within  
25 the scope of direct if liberally defined but which is